



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/77

In the Matter of land in the centre of the
Village, Colburn, Richmondshire D., North
Yorkshire

DECISION

This reference relates to the question of the ownership of land approximately 1 acre on either side of Colburn Beck, in the centre of the Village, Colburn, Richmondshire District being the land comprised in the Land Section of Register Unit No. CL.175 in the Register of Common Land maintained by the North Yorkshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner. Following upon the public notice of this reference no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership. I held a hearing for the purpose of inquiring into the question of the ownership of the land at Richmond on 30 October 1974. At the hearing Colburn Parish Council were represented by Mr P.E. Stock, their chairman.

Mr Stock who has resided in the Parish for the last 5 years and been a member of the Parish Council for the last 4 years, in the course of his evidence produced the following documents as showing the history of the land:- (a) Letters dated 16 and 31 January 1961 written by Storey Sons & Parker (Chartered Surveyors etc) on behalf of Mr R.V.S. d'Arcy Hildyard; (b) letters dated 24 June and 13 November 1968 from Dr A.J. Pearson; and (c) a letter dated 2 July 1969 from the clerk of the County Council. Mr Stock said (in effect):- The Land ("the Unit Land") comprised in this Register Unit is by the side of the Beck which runs through the old part of the Village; the main part, as a result of much recent building development is to the south towards Catterick. The Parish Council have no documents of title relating to the Unit Land. As to the possibility of the Unit Land being owned by the Lord of the Manor: some in the Village say that there was a Manor of Colburn, others say there was not; Colburn Hall which ^{manor} with such a Manor was in 1961 owned by Mr D'Arcy Hildyard; the letter of 16 January 1961 by which notice was given to the Parish Council of his intention to carry out tree planting in O.S. Field No. 158 (north of the northeast end of the Unit Land) contained a statement (with reference to his ownership of land on both sides of the stream) ~~"it would appear that the banks of the stream are vested in the Parish Council"~~ "it would appear that the banks of the stream are vested in the Parish Council"; and the letter of 31 January 1961 contains the statement "Mr d'Arcy Hildyard appears to be of the opinion that the land adjoining the Beck is vested in the Parish Council, but there is no absolute certainty about this. Where an owner has land on both sides of the stream, it is normal practice for him to own the stream also and its banks, but in this case Mr Hildyard seems to think otherwise"; his widow still lives at the Hall. Dr Pearson in his letter of 24 June 1968 recognised the interest of the Parish Council in that he asked their approval to his erecting a road bridge where there used to be a footbridge and ford (as marked on the Register map); this road bridge has since been erected. In the letter of 2 July 1969, Mr R.A. Wotherspoon clerk of the County Council says (with reference to correspondence about



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the flooding of the Beck):- "I have inspected the Parish Records in the keeping of the Rev. Hemmels at Catterick Parish Church, but these do not throw any light on the ownership of the beck". The general understanding (Mr Stock said) is that the Unit Land is parish property; the Parish Council when people have dumped rubbish there, have cleaned it up put up a NO RUBBISH notice; children play on the Unit Land. In 1969 the Unit Land was seriously flooded; by reason of the improved drainage and building development higher up, the water comes down the Beck in much larger quantities than formerly; Dr Pearson in his letter of 13 November 1968 asks "what plans the Parish Council have in mind for the prevention of further flooding". Notwithstanding that the Unit Land is in places very rough, as a whole it is a substantial contribution to the beauty of the old part of the Village.

Two days after the hearing, I inspected the Unit Land. The boundaries are (except in the two respects below mentioned) distinct being fences or other reasonably obvious physical features. It can I think properly be regarded as a distinct piece of land through which the Beck flows, rather than a piece of land comprising the Beck and its banks. Accordingly I negative the ownership of the Unit Land up to the middle of the Beck being in the same persons as own the adjoining land, because in my view the presumption that a bed of a river is in the same ownership as that of the banks of a river is inapplicable; the land which adjoins the Unit Land cannot I think be fairly regarded as adjoining the river. Although in some places it is very near the river, in such places it is nearly everywhere fenced.

Although there has been some recent building development nearby, the Unit Land appears to be an important piece of land in relation to the old Village; in former days this part of the present Village may well have been all there was of the cluster of houses between and around Colburn Hall on one side of the Beck and what is now the Hildyard Arms Public House on the other. The ford at the west end, what was a ford (now a bridge) in the middle, and the access to the Beck at the northeast end (apparently a watering place but perhaps at some time a ford) must in former time have been important to the life of the Village.

On appearance and the documentary evidence produced by Mr Stock, I accept his conclusion that the Unit Land is Parish Property. From this conclusion it follows that by operation of law it was in former time vested in the Churchwardens and Overseers in accordance with the principles established in Doe v. Hiley (1830) 10B & C.885 and Doe v. Terry (1835) 4A. & E.274 at page 281, and recognised as still applicable in Haigh v. West 1893 2QB. 19 at page 31; and it is now vested in the Parish Council as successors of the Churchwardens and Overseers by the Overseers Order 1927 (S.R. & O.1927 No.55).

There are two respects to which I feel some hesitation in applying the reasoning in the preceding paragraph to the whole of the Unit Land. First, the boundary on the north side of the Beck at the northeast end of the Unit Land is indistinct: however this may be explained by the general inaccessibility of this part of the Unit Land (for which recent planting on the adjoining land may be responsible). Secondly on the east side of the Beck at the northeast end of the Unit Land, a small part of it appears to have been taken into a garden and driveway of the dwellinghouse (which as appears on the Register map) marks the extreme northeast end of the Unit Land. I have no evidence about either of these parts of the Unit Land. Notwithstanding the hesitatic





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I feel in these two respects; because no owner of any adjoining land attended or was represented at the hearing or made any claim to any part of the Unit Land and because the Unit Land (its registration as common land being undisputed has become final) is on the Register treated as one piece of land, I ~~think~~ apply to its northeast end, the conclusion as to ownership which I have as explained above reached as regards the rest of the Unit Land.

For the above reasons I am satisfied that the Parish Council is the owner of the land, and I shall accordingly direct the North Yorkshire County Council, as registration authority to register Colburn Parish Council as the owner of the land under section 8(2) of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 24/12

day of

January

1975

a. a. Baden Fuller

Commons Commissioner